

# EXHIBIT 4

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

KIM EMBRY, AN INDIVIDUAL,  
Plaintiff,

vs.

CASE NO. RG20057491

B&G FOODS NORTH AMERICA, INC.,  
A DELAWARE CORP., RALPH'S  
GROCERY COMPANY, AN OHIO CORP.  
Defendants.

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DEPOSITION OF KIM EMBRY  
APPEARING REMOTELY FROM  
San Francisco, California  
Friday, November 13, 2020

Stenographically Reported by: Ashley Soevyn,  
CSR No. 12019  
APPEARING REMOTELY FROM MARIN COUNTY, CALIFORNIA  
Magna Job No. 663115  
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1           SUPERIOR COURT OF THE STATE OF CALIFORNIA  
2                           COUNTY OF ALAMEDA

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4   KIM EMBRY, AN INDIVIDUAL,  
5                           Plaintiff,

6           vs.   CASE NO. RG20057491

7   B&G FOODS NORTH AMERICA, INC.,  
8   A DELAWARE CORP., RALPH'S  
9   GROCERY COMPANY, AN OHIO CORP.  
                          Defendants.

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13                   Deposition via video conference of  
14   KIM EMBRY taken on behalf of defendants, with all  
15   parties appearing remotely beginning at 10:06 a.m.  
16   and ending at 12:40 p.m. on Friday, November 13,  
17   2020, before ASHLEY SOEVYN, Certified Shorthand  
18   Reporter No. 12019.

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1 REMOTE APPEARANCES:

2

3 For the Plaintiff Kim Embry

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21

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23 Also Remotely Present: Nick Peruto, Videographer

24 Cameron Baker, paralegal, BraunHagey & Borden

25 Valerie Garcia, paralegal, Glick Law Group

|   |                         |      |
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| 3  | KIM EMBRY V. B&G FOODS NORTH AMERICA |                                 |      |
| 4  | Friday, November 13, 2020            |                                 |      |
| 5  | Ashley Soevyn, CSR No. 12019         |                                 |      |
| 6  | EXHIBIT NO.                          | DESCRIPTION                     | PAGE |
| 7  |                                      | (Provided electronically to the |      |
| 8  | Exhibit 1                            | LinkedIn Profile of Kim Embry   | 11   |
| 9  | Exhibit 2                            | Defendant's Amended Notice of   | 14   |
| 10 |                                      | Deposition of Plaintiff Kim     |      |
| 11 | Exhibit 3                            | Embry                           |      |
| 12 | Exhibit 4                            | Release and Settlement          | 36   |
| 13 |                                      | Amazon.com Lambro 289w dryer    | 41   |
| 14 |                                      | vent seal                       |      |
| 15 | Exhibit 5                            | Settlement Agreement            | 43   |
| 16 |                                      |                                 |      |
| 17 | Exhibit 6                            | Settlement Agreement & General  | 49   |
| 18 |                                      | Release                         |      |
| 19 | Exhibit 7                            | Letter dated March 2, 2018 to   | 54   |
| 20 |                                      | Mr. Glick and Mr. Nicholas from |      |
| 21 |                                      | the Office of the Attorney      |      |
| 22 |                                      | General                         |      |
| 23 | Exhibit 8                            | Complaint for Civil Penalties   | 63   |
| 24 |                                      | and Injunctive Release          |      |
| 25 | Exhibit 9                            | Consent Judgment as to Nonni's  | 68   |
|    |                                      | Foods, LLC                      |      |
|    | Exhibit 10                           | Letter dated March 20, 2020     | 94   |
|    |                                      | Offer to Compromise             |      |

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1           A     Not really. I have a Costco membership. 11:33:01

2     I can't remember the last time I've been.

3           Q     Got it. So at issue in this lawsuit

4     and -- and many of your other notices of violation

5     is a chemical called acrylamide. What is 11:33:22

6     acrylamide?

7           A     Acrylamide --

8                   MR. GLICK: Objection. Hold on. Hold

9     on. Objection. Calls for expert testimony, lacks

10    foundation. 11:33:33

11                   THE WITNESS: I do know a little bit

12    about acrylamide. It is a chemical found in foods.

13    When cooked -- baked at really high temperatures and

14    then once it's ingested in the human body, it

15    actually becomes a carcinogen. 11:33:48

16    BY MR. KWASNIEWSKI:

17           Q     And -- and you mentioned it's formed in

18    foods when they're -- when they're baked or fried,

19    you said?

20           A     To my understanding, I -- when it's at a 11:33:55

21    very high temperature, baked and fried, that's when

22    it forms.

23           Q     And you understand that it forms in -- in

24    all manners of food when they're treated that way,

25    like if you fry fish or bake it or if you roast 11:34:12

1 conclusion, vague and ambiguous, lacks foundation. 11:59:17

2 BY MR. KWASNIEWSKI:

3 Q You can answer, Ms. Embry, if you can.

4 A I -- actually, I don't know the answer to  
5 this, so I would say no. 11:59:37

6 Q Okay. Earlier we talked a little bit  
7 about your research into acrylamide. I want to get  
8 a bit more specific now.

9 Have you read any scientific study about  
10 whether the cookie cakes at issue in this lawsuit 11:59:58  
11 cause cancer?

12 A No.

13 Q What about any study that the cookie  
14 cakes cause birth defects?

15 A No. 12:00:09

16 Q Are you aware of any person who has ever  
17 contracted cancer because he ate these cookie cakes?

18 A No.

19 Q Or any person who has had a birth defect  
20 because he ate these cookie cakes or she? 12:00:29

21 A No.

22 Q So your goal in bringing this lawsuit or  
23 at least one goal is to get warnings on these  
24 products, correct?

25 A Yes. 12:00:56



1           Q     But you wouldn't want B&G Foods to put a     12:00:59  
2     warning on its products that was false, would you?

3           A     No.

4                     MR. GLICK:   Vague and ambiguous.

5     BY MR. KWASNIEWSKI:                                     12:01:09

6           Q     Now, you just said that you're not aware  
7     of any research or study that the cookie cakes cause  
8     cancer but you still want B&G Foods to put a warning  
9     on its product which says that they do; is that  
10    right?   12:01:36

11                    MR. GLICK:   Objection.   Argumentative,  
12    lacks foundation, calls for a legal conclusion,  
13    calls for expert testimony.

14                    THE WITNESS:   My knowledge is that the  
15    cookies have acrylamide in them.   We're not going     12:01:48  
16    after the cookie itself.   We're going after the  
17    chemical that's in them.

18     BY MR. KWASNIEWSKI:

19           Q     Okay.   But you don't know whether the  
20    cookie cakes themselves could ever cause cancer in     12:01:58  
21    anyone?

22                    MR. GLICK:   Same objections.

23                    THE WITNESS:   I mean, we could say that  
24    about a number of different products, that's why  
25    we're looking at what the make up is of the product.   12:02:13

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1 So the chemical that's in there is what causes 12:02:15

2 cancer, just like a cigarette. The wrapper of a

3 cigarette doesn't cause cancer, but what the

4 chemicals are inside is what do. That's why people

5 went after big cigarette companies. 12:02:27

6 BY MR. KWASNIEWSKI:

7 Q Got it. So do I understand you to be

8 suggesting that cookie cakes are as bad for you as

9 cigarettes?

10 A That's not what I -- 12:02:36

11 MR. GLICK: Hold on. Hold on.

12 Objection. Calls for expert testimony, lacks

13 foundation, argumentative. Go ahead.

14 THE WITNESS: That's not --

15 BY MR. KWASNIEWSKI: 12:02:47

16 Q You can answer the question.

17 A No.

18 Q And you said before that you're not aware

19 of anyone who has ever contracted cancer because

20 they ate cookie cakes, right? 12:02:58

21 A Not cookie cakes, no.

22 Q Did you specifically do any research

23 before you filed this complaint regarding how often

24 people eat cookie cakes?

25 A I did not do research, no. 12:03:17

1           Q     Do you have an understanding, apart from 12:03:20  
2     any discussions you may have had with your  
3     attorneys, about how many cookie cakes a person  
4     would have to eat to be exposed to a dangerous level  
5     of acrylamide? 12:03:33

6           MR. GLICK: Objection. Calls for expert  
7     testimony and calls for attorney-client  
8     communications, and although he did caveat that to  
9     say apart from our communications, do not reveal in  
10    answering the question anything that might be 12:03:47  
11    protected by the attorney-client privilege.

12          THE WITNESS: Could you repeat the  
13    question?

14          MR. KWASNIEWSKI: Sure. Madam Court  
15    Reporter, would you mind reading it back. 12:03:57

16          THE REPORTER: (Record read.) Do you  
17    have an understanding apart from any discussions you  
18    may have had with your attorneys about how many  
19    cookie cakes a person would have to eat to be  
20    exposed to a dangerous level of acrylamide? 12:04:18

21          THE WITNESS: No, that's where I would  
22    trust an expert's opinion.

23    BY MR. KWASNIEWSKI:

24          Q     So let's talk about the co-defendant, my  
25    other client, which is Ralph's Grocery Company. Why 12:04:26

1 I, the undersigned, a Certified Shorthand  
2 Reporter of the State of California, do hereby  
3 certify:

4 That the foregoing proceedings were taken  
5 before me at the time and place herein set forth;  
6 that any witnesses in the foregoing proceedings,  
7 prior to testifying, were duly sworn; that a record  
8 of the proceedings was made by me using machine  
9 shorthand, which was thereafter transcribed under my  
10 direction; further, that the foregoing is a true  
11 record of the testimony given.

12 I further certify I am neither financially  
13 interested in the action nor a relative or employee  
14 of any attorney or party to this action.

15 IN WITNESS WHEREOF, I have this November  
16 30, 2020 subscribed my name.

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21 \_\_\_\_\_  
22 ASHLEY SOEVYN  
23 CSR No. 12019  
24  
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